(28)

FILED
APR 10 1943
CHARLES ELMORE CROPLEY

# Supreme Court of the United States

OCTOBER, 1942, TERM.

No. 905

J. W. SANDERS COTTON MILL, INC.,
PETITIONER,

VS.

LULA MOODY, RESPONDENT.

## PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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## PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

Your petitioner, J. W. Sanders Cotton Mill, Inc., respectfully prays that a writ of certiorari issue out of this Honorable Court to review a final judgment of the Supreme Court of the State of Mississippi, rendered in the above entitled cause on the 30th day of November, 1942 (R. 532). The petitioner further shows that a suggestion of error was filed in said cause on the 14th day of December, 1942 (R. 533), within the time allowed by Rule XIV of the Supreme Court of Mississippi (Mississippi Code Supplement of 1938, page 1900), which Suggestion of Error was overruled on the 11th day of January, 1943, on which date said judgment became final. No opinion was filed in said cause by the Supreme Court of Mississippi on the appeal mentioned above, but its action is noted in 10 So. 2d 544, and is shown by the record herein.

## I.

## SUMMARY STATEMENT OF THE MATTER INVOLVED.

On November 29, 1938, the respondent herein filed her declaration in the Circuit Court of Lauderdale County, Mississippi, against the petitioner herein, to recover for personal injuries alleged to have been received while working in petitioner's cotton mill. This declaration was signed by the Honorable Fred A. Ross, as leading counsel for respondent, and M. V. B. Miller, as associate counsel. The caption, showing the organization of the court at which the cause was last tried, shows that the said Fred A. Ross was Sheriff in and for the County of Lauderdale. The testimony of Mr. Ross, given in opposition to a motion to quash the panel (R. 27), shows that Mr. Miller was the personal attorney for Mr. Ross insofar as he had need for such legal assistance.

The cause was first tried to a jury, which returned a verdict in favor of respondent in the amount of $7,000. The judgment entered on this trial was reversed by the Supreme Court of Mississippi, as will appear from the opinion rendered on said appeal, reported in 189 Miss. 284, 195 So. 83. Prior to rendering the opinion above referred to, the Supreme Court of Mississippi addressed a memorandum to the attorneys, raising certain questions and requesting that additional briefs be submitted thereon. A copy of this memorandum will be attached to the brief to be filed in support of this petition, as an appendix thereto.

On a second trial of the cause, a second verdict for respondent, in the amount of $7,000, was returned by the jury, and the judgment entered thereon was reversed by the Supreme Court of Mississippi, as shown by its opinion reported in 191 Miss. 604, 2 So. 2d, 815.

On the third trial, the jury returned a verdict in the amount of $8,000, and on the third appeal the Supreme

Court of Mississippi entered its judgment, review of which is sought by this petition, without rendering an opinion.

Respondent alleged, and the proof showed, that in the course of her employment by petitioner she attended a machine known as a spinning frame, on each side of which there is an aligned row of clearer boards, fifteen in number, forty inches from the floor, each board being about twenty-two inches long, about three and one-half inches wide, and grooved or hollowed out on the lower side, so as to be about one-half inch thick, and to weigh about one and one-half or two pounds. The lower side of each clearer board has attached to it eight felt pads, so arranged and aligned as to rest lightly upon rollers; the purpose of the clearer boards and their pads being to keep the rollers clear of lint which would otherwise interfere with the functions of the rollers. In each end of each clearer board there is a longitudinal slit about one inch long and one-fourth inch wide, designed to engage latches attached to the machine, so that a slight movement is allowed to the clearer board as their pads rub against the rotating rollers, and preventing the clearer boards from falling from the machine.

In the progress of the operations of the mill, lint will collect upon and around the rollers, and also upon the clearer boards. One of the duties which respondent was employed to perform was to remove the accumulated lint from the rollers, the clearer boards and the felt pads attached thereto. Another duty was to remove accumulated lint from a panel behind and below the rollers, by passing a brush or cleaner, called a sideboard, over and against this panel. Respondent claims to have been injured while in the process of pushing the sideboard along the panel of the machine with her right hand, while she passed her left hand over the top of the clearer boards, all of which were allowed to remain in place, to remove any accumulated lint from the top of the clearer boards; and

that as her hand passed from one of the clearer boards to another, the board over which her hand had just passed was caused to fall from the machine because of a broker latch at the end nearest her hand; the clearer board falling upon her foot and producing the injuries for which she complains.

Prior to the commencement of the third trial, petitioner filed its motion to quash the panel, on the ground that the Sheriff, who under the law was charged with duties to be performed in conjunction with other officers of the county in the drawing of the jury, and was solely responsible for the summoning and obtaining the attendance of jurors upon the court and witnesses upon the trial, and providing for the lodging, feeding and protection of the jury during the course of the trial, was the original counsel employed by respondent in this case. This motion was overruled, but the trial court displaced the Sheriff insofar as he was to perform further services in connection with the trial, and directed that the Coroner act in his stead, as required by Mississippi law.

The reversal on the first appeal to the Supreme Court of Mississippi was occasioned by excursions by respondent and her attorneys for the issues involved into wholly collateral matters prejudicial to petitioner, all as will be shown by the opinion rendered on said appeal and the memorandum submitted to the attorneys during the pendency thereof (189 Miss. 284, 195 So. 683; and see appendix to brief in support of this petition). Petitioner contends that it was denied due process of law in that the court which tried this action included among its officers, and as the principal executive officer thereof, the original attorney for respondent, whose duty it was to assist in the drawing of the jury, to serve subpoenas upon the jurors and the witnesses, and to provide for the keep and maintenance of the jurors during the course of the trial. Petitioner was further denied due process of law by virtue of the fact that the Sheriff, a political office-holder in Mississippi, and who was the original counsel

for the plaintiff, was permitted to participate in the trial of the cause as a witness, and to show, to the prejudice of the petitioner, that there was personal animosity between himself and various employees of petitioner, as well as witnesses called by petitioner to establish its defense to the action.

Petitioner contends that it was denied equal protection of the laws, in that the Supreme Court of Mississippi correctly stated the rules of law obtaining in Mississippi in such cases on the first appeal herein, and held that under such rules respondent would not be permitted to recover on the verdict rendered in a trial had in violation thereof, whereas on the third trial the same errors were committed and the same conduct indulged in by the court and counsel for respondent, as were committed and indulged in on the first trial, and the Supreme Court of Mississippi entered its judgment affirming the judgment entered on the verdict rendered on such trial contrary to the prior holdings of said court, without resorting to any contravening principle of law, and without modifying the law previously announced.

## II.

## OPINION BELOW.

The court did not file any opinion when it rendered its decision on the appeal in which the judgment here under review was rendered. However, its action is noted unofficially as *J. W. Sanders Cotton Mill, Inc.*, v. *Lula Moody*, No. 35074, 10 So. 2d 544.

Opinions rendered on former appeals are as follows:

Second Appeal: *J. W. Sanders Cotton Mill, Inc.*, v. *Moody*, No. 34622, 190 Miss. 604, 2 So. 2d 815.

First Appeal: *J. W. Sanders Cotton Mill, Inc.*, v. *Moody*, No. 33989, 189 Miss. 284, 195 So. 683.

## III.

## JURISDICTION.

The jurisdiction of this Honorable Court is invoked under Section 240 of the Judicial Code, as amended, by Acts of February 13, 1925, Subsection (a) and (b), separately and severally, 28 U. S. C. A. 347, and also Rule XXXVIII of the Revised Rules of the Supreme Court of the United States adopted February 13, 1939.

## IV.

## REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

1. The Supreme Court of Mississippi has decided an important question of Federal Law, which has not been, but should be, settled by this court.

(a) The decision of the Supreme Court of Mississippi, affirming the action of the Circuit Court of Lauderdale County in not quashing the venire, amounts to a holding that petitioner was accorded a fair and impartial trial within the meaning of the due process clause, where the principal executive officer of the court was the original leading counsel for respondent.

(b) The action of the Supreme Court of Mississippi, in affirming the judgment of the Circuit Court of Lauderdale County rendered at the conclusion of the third trial on which the same errors were committed as were committed on the first trial and denounced on the first appeal, results in a denial to petitioner of the protection of the law of the State of Mississippi as announced by the Supreme Court of said state on said first appeal, and which is still the law of said state.

(c) The combined effect of requiring petitioner to submit its defense to a court so organized as to have as its

principal executive officer the former leading counsel for respondent and the allowance by the trial court of excursions from the issues joined between petitioner and respondent into matters collateral and foreign to such issues but which were prejudicial to petitioner, amounts to a departure from the fundamental rules of equal justice and fair play contemplated by due process of law and equal protection of the law.

The importance of these propositions rests in the fact that if the Supreme Court of Mississippi can affirm the judgment of a court so organized as to include as its principal officer the former leading counsel of one of the litigants, and that has proceeded to hear countless collateral issues to the prejudice of the other litigant, "due process" and "equal protection" may be denied to any citizen of the United States without regard to his race, color, position or standing in the county where the action is tried.

2. The Supreme Court of Mississippi has decided an important question of Federal Law very probably in conflict with applicable decisions of this court.

This court has been at pains to lay down certain fundamental concepts of fair play as being requisite to due process of law under the Fourteenth Amendment. The decision of the Supreme Court of Mississippi upholding the action of the Circuit Court of Lauderdale County, Mississippi, is contrary to the views expressed by this court in its decision announcing such rules of fair play.

## V.

## QUESTIONS PRESENTED.

The questions presented for determination by this court on the grant of the writ herein prayed for are as follows:

(1) Whether or not petitioner was denied due process of law by being required to answer the action of re-

spondent and defend the same in a court in which the principal executive officer was the former leading counsel for respondent; such officer being charged with the duties of participating in the drawing of the jury, the summoning of the jurors and the witnesses, and the lodging, feeding, and protection of the jurors during the trial of litigated cases, as well as the performance of other duties required of the Sheriff by the laws of the State of Mississippi.

(2) Whether the failure of the Supreme Court of Mississippi to reverse the judgment rendered on the third trial after correctly announcing the controlling principles of law on the appeal from the judgment rendered on the first trial, where the errors committed on the first trial were apparent on the face of the record of the third trial amounted to a denial to petitioner of equal protection of the laws.

(3) Whether or not requiring petitioner to appear and defend in a court which had as its principal executive officer the former leading counsel for respondent and allowing the trial to proceed to issues collateral and irrelevant to the issues joined between petitioner and respondent, all of the evidence on such collateral and irrelevant issues being prejudicial to petitioner, amounts to a denial of "due process" and "equal protection" as being violative of the fundamental rules of fair play as contemplated by the Fourteenth Amendment to the Constitution.

(4) Whether or not the central government will intervene and protect its citizens where the laws of a state provide for and guarantee due process and equal protection, but the action of its court clothed with authority to declare such law amounts to a denial of due process and equal protection, but the manner in which the court acts is such that its action does not amount to a modification of the laws of said state.

(5) Whether or not the Supreme Court of Mississippi, which is clothed with the power and authority to declare the laws of the State of Mississippi, exhausts its function with respect to "due process" and "equal protection," where it declares the law on the first appeal in such manner as to afford "due process" and "equal protection," and on the third appeal in the same case, with the same errors apparent on the face of the record, declines to follow its former ruling, and also declines to file an opinion modifying its former holding.

VI.

**SPECIFICATION OF ERRORS.**

(1) The Supreme Court of Mississippi erred in affirming the judgment of the Circuit Court of Lauderdale County overruling petitioner's motion to quash the panel.

(2) The Supreme Court of Mississippi erred in entering its judgment affirming the judgment on the verdict returned at the conclusion of the trial of said cause.

(3) The Supreme Court of Mississippi erred in affirming the judgment of the Circuit Court of Lauderdale County overruling petitioner's motion for a new trial.

(4) The Supreme Court of Mississippi erred in not reversing the judgment of the Circuit Court of Lauderdale County and remanding the cause for another trial.

VII.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Supreme Court of Mississippi, commanding said court to certify and send to this court a full and complete transcript of the record and proceedings in said court had in Cause No. 35074, on the docket of said court, being entitled, *J. W. Sanders Cotton Mill, Inc.*, v. *Lula Moody,*

to the end that said cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment therein of the Supreme Court of Mississippi be reversed by this court, and for such other relief as may be proper.

J. W. Sanders Cotton Mill, Inc.
Petitioner,

By BEN F. CAMERON,
*Counsel for Petitioner.*